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No. 91-1899

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

CHRISTOPHER C. DAY, PH.D.,

Petitioner,

—against—

JOHN W. MOSCOW; JOSEPH B. MURRAY, Individually and as Senior Court Officer of the State of New York; "JANE DOE" MARSHALL, Individually and as Captain of the New York City Department of Correction; JOHN DOE, 1-10, Unknown named Officers of the New York City Police Department and the New York City Department of Correction,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MEMORANDUM IN OPPOSITION FOR RESPONDENT MURRAY

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Petitioner seeks plenary consideration of a judgment of the United States Court of Appeals for the Second Circuit which dismissed his claims against respondent Murray. The Court of Appeals held, correctly, that petitioner's claims against respondent Murray are time-barred ("*Day I*") (A.11[1] and A.21 [on

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1 References in the form A.____ are to the appendix to the petition.

rehearing]) and that principles of res judicata bar petitioner's attempt to litigate, as to respondent Murray, new claims that could have been asserted previously ("*Day II*") (A.52).

Petitioner first argues that the Court of Appeals, in ruling that his false arrest claim under 42 U.S.C. § 1983 accrued on December 12, 1985, the day of his arrest, not on December 13, 1985, the day of his arraignment, erred by applying a "general federal rule of accrual" instead of state law. However, as the Court of Appeals noted (A.18-19), this Court has made clear that "[o]nly the length of the limitations period, and closely related questions of tolling and application, are to be governed by state law [footnote omitted]." *Wilson v. Garcia*, 471 U.S. 261, 269 (1985). When petitioner's claims accrued is determined by federal law, and the Court of Appeals rightly held his claims against Murray were time-barred.

Petitioner also argues that *Day I* did not bar him from litigating new claims against respondent Murray because that decision was not final. In *Day I*, however, the Court of Appeals affirmed not only the district court's dismissal of the complaint against respondent Murray, but also the denial of leave to replead against Murray. Thus, *Day I* necessarily precluded all claims that Day could have asserted against Murray arising out of the same series of events, for that decision finally determined that all such claims were time-barred and that Day would not be granted leave to amend the complaint in order to plead such claims.

Therefore, the petition for a writ of certiorari should be denied.

Dated: New York, New York
June 23, 1992

Respectfully submitted,

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